Supreme Court, U. S.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-1350

JOSEPH J. GARIBALDI, LEO S. GARIBALDI
and LEONA D. GARIBALDI,
Petitioners,

vs.

EDITH CANVIN, as Administratrix of the Estate
of Theresa Garibaldi, Deceased, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI to the Court of Appeal of the State of California Third Appellate District

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INTRODUCTION

Respondents pray that the Petition for Writ of Certiorari by petitioners to review the January 5, 1977, judgment of the Court of Appeal of the State of California, Third Appellate District, be denied.

JURISDICTION

Even a cursory review of the provisions of Section 1257(3) of Title 28 of the United States Code readily

discloses that this Court does not, and should not, extend its jurisdiction to review the present final judgment in Garibaldi v. Garibaldi, in the Superior Court of the County of Amador, State of California. Such judgment was affirmed on appeal by the Court of Appeal of the State of California, Third Appellate District. The opinion of said Appellate Court which is referred to by petitioners as a judgment, is Appendix "A" of their petition.

CONSTITUTIONAL PROVISIONS AND STATE STATUTES INVOLVED

Our only quarrel with the Constitutional provisions and the State of California statutes cited by petitioners is that the same are not applicable to this present matter.

STATEMENT OF THE CASE

The opinion of the California Court of Appeal, Third Appellate District contains a more complete statement of facts of this case than as presented by petitioners. (See Appendix "A", ii to viii, of Petition for Writ of Certiorari).

Likewise, the issues presented to the said Appellate Court are more clearly set out therein than in the present Petition. (See Appendix "A" to Petition, page viii).

The last sentence of the Appellate Court's decision clearly establishes the basis of such Court's decision

and that all of the parties had a full and fair hearing at which time their respective contentions were fully presented and ultimately determined.

REASONS FOR DENYING THE WRIT

Petitioners consistently mistake the issues. The basic issue before the California Courts was whether or not petitioners received a full and fair hearing in each of the many prior state proceedings or were they denied same by the alleged fraud of respondents.

The Trial Court found that a full and fair hearing was had by petitioners in those earlier proceedings. Such findings were affirmed on appeal. Petitioners exercised, and were given, their right of appeal for the third time on substantially these same issues.

Petitioners claim they have been denied due process by the Appellate Court. Not once, even to this day, have petitioners asserted that they were denied due process by the Trial Court when its adverse judgment was entered. It is from the judgment of the Trial Court that petitioners appealed. No cry of lack of due process was raised on appeal. It was the judgment of the Trial Court that the Appellate Court fully reviewed and affirmed. The Appellate Court did not deny petitioners the right to be heard on appeal. Such a denial would have denied due process. In affirming the Trial Court's judgment, the only thing the Appellate Court denied was the position taken by petitioners on appeal. Is the receiving of an adverse decision, a denial of due process? If so, every losing

party will automatically become a candidate for review by this Court.

Under 28 U.S.C.A. Section 1257(3) to achieve the right to have their present Petition granted, it must be shown that there is a federal question. It is quite apparent there is no federal question involved in the present case, nor are there any "special and important reasons" for a review by this Court of the Garibaldi judgment. (U.S. Supreme Court Rule No. 19, 28 U.S.C.A.)

The action of the Appellate Court followed a fair trial and there is no claim by petitioners that there was a constitutional issue involved therein. Thus, as stated in *American Ry. Express v. Kentucky,* 273 U.S. 269, 71 L.Ed. 639, 47 S.Ct. 353):

> ". . . We cannot interfere, unless the judgment amounts to mere arbitrary or capricious exercise of power, or is in clear conflict with those fundamental 'principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.'" (cited cases)

The Court further stated in said case that:

> "It is firmly established that a merely erroneous decision given by a state court in the regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law." (cited cases)

The petitioners' request for the review by this Court must be denied for there is no federal issue, constitutional or otherwise; nor is the Trial Court judgment and the affirmation thereof by the Appellate

Court arbitrary or a capricious exercise of power; nor have the rights of petitioners been denied or violated. Petitioners are merely members of the unsuccessful side of a litigated matter of no importance other than to the parties involved therein.

CONCLUSION

In the words of Justice Evans in his Appellate Court opinion:

> "It is hoped and intended by this opinion that a final armistice will be declared as it relates to the battle over the property of Theresa. . . ." (Appendix "A" of Petition for Writ of Certiorari, page xvii)

To such end, we respectfully submit that the Petition for Writ of Certiorari should be denied and the Garibaldi matter finally laid to rest.

Dated, Stockton, California,
April 22, 1977.

Respectfully submitted,
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